

STATE OF MICHIGAN
COURT OF APPEALS

KUNG FU INDUSTRIAL,

Plaintiff-Appellant,

v

METRO MANUFACTURING,

Defendant,

and

JERRY THIEL,

Appellee.

UNPUBLISHED

October 31, 1997

No. 197084

Macomb Circuit Court

LC No. 92-003571 CK

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Plaintiff appeals by right from a post judgment order of the Macomb Circuit Court, relieving appellee surety of his obligations under a \$50,000 stay bond. This case is being decided without oral argument pursuant to MCR 7.214(E).

The circuit court correctly cited *Howard v Lud*, 119 Mich App 55, 60; 325 NW2d 623 (1982), for the proposition that:

It is a matter of general suretyship law that a surety will be released, even as against the obligee, where his risk is materially increased by some action of the obligor. 74 Am Jur 2d, Suretyship, §34, p 35.

However, this correct principle of law has been misapplied by the circuit court on these facts. Here, the obligors did nothing after the suretyship obligation was established to increase the risk beyond that contemplated by the surety at the time of origination. There was always a risk that the collateral, which consisted only of the personal guarantees of four corporate principals, would prove unavailing if all four people declared bankruptcy. That such risk actually came to pass is simply not the same thing as saying

that the risk was increased; nor is any claim made that all the guarantors were insolvent when their guarantees were given but that such information was fraudulently withheld from appellee surety. The surety's obligation is not released by the discharge of the principal by an act of the law in which the creditor does not participate, as in the case of a discharge of the principal in bankruptcy or under insolvency laws. 74 Am Jur 2d, Suretyship, § 98, p 72. The present scenario is precisely within the scope of the risk which appellee surety accepted, and if the premium charged and collateral obtained failed to protect the surety against loss, that is in the nature of the suretyship business and provides no basis for relieving the surety of the obligation undertaken and on which plaintiff properly was entitled to rely.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gribbs